Supreme Court, U.S.
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No. 98-858

In The

Supreme Court of the United States

October Term, 1998

COWBOY AUTO SALES, INC. and
BRUCE WILLIAMS,

Petitioners,

v.

WILSON HALWOOD, JR., and
LORENA HALWOOD,

Respondents.

**On Petition For Writ Of Certiorari
To The Court Of Appeals
For The State Of New Mexico**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This is not the case that is described and argued in the Petition for Writ of Certiorari. Petitioners seek review of a decision that became final more than one year ago, but even their arguments directed at that decision are misguided. Moreover, both that earlier decision and the more recent decision of the New Mexico Court of Appeals of which Petitioners purport to seek review rest on independent and wholly adequate state law grounds. This Court thus lacks jurisdiction to grant review here.

Respondents originally filed this action in New Mexico District Court, seeking enforcement of a Navajo Tribal Court judgment awarding compensatory and punitive damages against Petitioners for wrongful repossession of Respondents' vehicle from Respondents' residence on the Navajo Indian Reservation.[1] The district court enforced the compensatory damages portion of the Navajo judgment, but declined to enforce the punitive damages portion, and Respondents appealed. The New Mexico Court of Appeals, in an opinion issued on May 20, 1997, held that "New Mexico courts should recognize such [punitive damage] judgments from tribal courts under the doctrine of full faith and credit *or comity*." *Halwood v. Cowboy Auto*

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[1] The underlying case was merely a civil case for statutory and punitive damages. Petitioners' claim that Respondents "allege criminal violations by" Petitioners, Petition at 13, is thoroughly false. Similarly, Petitioners' assertion that the Navajo court awarded punitive damages "without any presentation of evidence," Petition at 2, is belied by the detailed Navajo court decision itself, App. 29-43, which specifically refers to evidence that the court considered that justified the punitive damages award. App. 38-39.

Sales, 124 N.M. 77, 78, 946 P.2d 1088, 1089 (Ct.App.1997) (*"Halwood I"*) (emphasis added). App. 10. The Court of Appeals specifically approved the enforcement of punitive damages in *Halwood I*, holding that "Imposition of punitive damages, furthermore, in a case such as this, is perfectly consistent with New Mexico public policy." App. 22. The New Mexico Supreme Court denied certiorari by order entered on September 24, 1997. App. 7. (*And see* App. 6, the Supreme Court's Order denying Petitioner's motion for reconsideration of the denial of certiorari.) Those decisions have long since become final.

On remand, the state district court issued an order enforcing the Navajo Tribal Court judgment in its entirety. App. 24-25. Petitioners appealed that order to the New Mexico Court of Appeals, which affirmed in an unpublished memorandum decision (*"Halwood II"*). It is the second decision of the Court of Appeals of which review is supposedly sought by this Petition, but Petitioners' arguments are directed almost entirely at the first decision.

SUMMARY OF THE ARGUMENT

Petitioners actually seek review of a decision in *Halwood I* that became final more than one year ago. The question of whether the state court can enforce the punitive damages aspect of a Navajo Tribal Court judgment was not decided in *Halwood II*. This Court's Rule 13 and 28 U.S.C. Section 2101(c) preclude such efforts at backdoor review of long-final state court decisions.

Petitioners also raise an issue whether the Navajo courts have the power to render a judgment against a non-Indian at all in the circumstances of this case. In the original state appeal, Petitioners did not challenge the district court's enforcement of the compensatory damages portion of the Navajo court judgment, and they acknowledged that the Navajo court had jurisdiction over them. The New Mexico Court of Appeals in *Halwood II* specifically declined to rule on those issues, and held simply that "law of the case" precludes further review.

Both the earlier decision in *Halwood I* and the more recent decision of the New Mexico Court of Appeals in *Halwood II* rest on independent and wholly adequate state law grounds. This Court thus lacks jurisdiction to grant review here.

Petitioners argue that *Montana* and *Strate* preclude Navajo Tribal Court jurisdiction over non-Indians. However, those decisions applied to privately owned land and highway rights-of-way within reservation boundaries. Neither of those decisions applies here, as the tribal land on which the petitioners' wrongful conduct occurred was land over which the tribe's proprietary and governmental powers are fully intact.

Finally, Petitioners' attack on the state court's full faith and credit ruling is not reviewable. The state appellate decision recognized that the Navajo Tribal Court judgment is fully enforceable on the alternative doctrine of comity. Comity is a matter of state law and policy consideration that is solely within the discretion of the

state courts. Therefore, this Court has no jurisdiction to review the state court decision.

ARGUMENT

I. THE DECISION OF WHICH REVIEW IS SOUGHT WAS BASED SOLELY UPON STATE LAW GROUNDS.

The decision of the New Mexico Court of Appeals in *Halwood II* does not involve an important question of federal law, as required by Rule 10 of the rules of this Court. Indeed, it involves no federal question at all, but rests entirely upon an independent and adequate state law ground. The memorandum opinion concludes "that review of Defendants' issues is precluded by the doctrine of 'law of the case.' " App. 2. The court found that both of the issues raised in *Halwood II* had been raised and decided in *Halwood I*, and it declined to review them further. The court considered each of Petitioners' arguments as to why law of the case should not be applied, and found them wanting. Under these circumstances, this Court has no jurisdiction to consider this Petition. *Coleman v. Thompson*, 501 U.S. 722, 729-730, 115 L. Ed. 2d 640, 111 S.Ct. 2546 (1991).

II. PETITIONERS' ATTEMPT TO SEEK REVIEW OF *HALWOOD I* IS PRECLUDED BY RULE 13 OF THE RULES OF THIS COURT AND BY 28 U.S.C. SECTION 2101(c).

Although technically, Petitioners' Petition is directed at the decision in *Halwood II*, it is apparent from the substance of the Petition that Petitioners are actually asking this Court to review the ruling in *Halwood I*, on the issue of whether a state court can enforce the punitive damages aspect of a Navajo Tribal Court judgment. That was not an issue that was decided in *Halwood II*, however. Indeed, Petitioners would even go further, and have this Court consider an issue that they did not even raise in *Halwood I* – whether the Navajo courts have the power to render a judgment against a non-Indian at all in the circumstances of this case. In the original appeal, Petitioners did not challenge the district court's enforcement of the compensatory damages portion of the Navajo court judgment, and they acknowledged that the Navajo court had jurisdiction over them. Petition at 3. The New Mexico Court of Appeals in *Halwood II* specifically declined to rule on those issues, and held simply that "law of the case" precludes further review. Petitioners failed to seek review of *Halwood I* in this Court, and the time for doing so is now long past. Apparently recognizing their error, they are now attempting to combine the two cases, asking this Court to reverse "*the decisions* of the New Mexico Court of Appeals." Petition at 30 (emphasis added). This Court's Rule 13 and 28 U.S.C. Section 2101(c) preclude such efforts at back-door review of long-final state court decisions.

III. PETITIONERS' ARGUMENTS BASED ON *MONTANA* AND *STRATE* ARE COMPLETELY MISPLACED.

Even were this Court inclined to overlook the fact that Petitioners seek review of a case decided more than a year and a half ago, there is nothing about the decision in *Halwood I* that warrants review. Petitioners' arguments in favor of review necessarily rely on omission or misrepresentation of crucial aspects of the factual record in this case and of the decision in *Halwood I*.

Petitioners contend that "under *Strate* and *Montana* the Navajo Tribe lacks any basis for asserting any jurisdiction over Petitioners Cowboy Auto Sales, Inc. and Bruce Williams pursuant to 7 N.T.C. Sec. 607." Petition at 7. In fact, however, this Court's decisions in *Montana v. United States*, 450 U.S. 544, 67 L. Ed. 2d 493, 101 S.Ct. 1245 (1981) and *Strate v. A-1 Contractors*, 520 U.S. 438, 137 L. Ed. 2d 661, 117 S.Ct. 1404 (1997) have no applicability whatever to the facts of this case.

In *Montana*, this Court announced a significant exception to the general rules of tribal jurisdiction within "Indian country" (that is, for these purposes, within the exterior boundaries of a tribe's reservation) with respect to the activities of non-Indians on non-Indian-owned land within the reservation. The Court held that "the inherent sovereign powers of an Indian tribe do not extend to the activities of non-members," 450 U.S. at 565, but it articulated several significant limitations to that exception. It stated that:

> To be sure, *Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction*

> *over non-Indians on their reservations, even on non-Indian fee lands.* A tribe may regulate, through taxation, licensing or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements. . . . A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the tribe.
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> 450 U.S. at 565-566 (citations omitted; emphasis added).

In *Strate*, a case involving a civil suit in tribal court arising from an automobile accident between two non-Indians, this Court extended the *Montana* exception. It held that tribal jurisdiction over the activities of non-Indians on a perpetual state highway right-of-way across tribal lands (at least where the tribe has not reserved its sovereign and proprietary rights in granting its consent to the right-of-way) is subject to the same limitations that apply to such jurisdiction on non-Indian fee land. The Court further held that tribal court jurisdiction over non-Indians is congruent with tribal governmental jurisdiction (the issue in *Montana*).

It is true that *Montana* and *Strate* have had a significant impact on the scope of tribal governmental and court jurisdiction over non-Indians on privately owned land and highway rights-of-way within reservation boundaries. Neither applies here, as neither *Montana* nor *Strate* purports to address tribal jurisdiction over non-Indians

on tribal land as to which the tribe's proprietary and governmental powers are fully intact. Even if those decisions were relevant to the facts of this case, moreover, their holdings would fully support the decisions in *Halwood I* and *Halwood II*.

Petitioners in this case voluntarily entered into a consensual contractual relationship with Respondent Wilson Halwood, in the form of a credit sale of a motor vehicle, knowing that Mr. Halwood was a Navajo Indian and knowing that he resided on the Navajo Indian reservation. Further, Petitioners knew that the Navajo Nation had enacted a law, codified at 7 N.T.C. Section 607, stating that repossession of secured property from lands under the jurisdiction of the Navajo Nation would be permitted only with the written consent of the debtor or by order of a Navajo Tribal Court. App. 34. The Tribal Council enacted that law precisely because of the extraordinary hardship to Navajo Indians residing on this sprawling, remote reservation, resulting from unconsented repossessions of motor vehicles. *See, Chischilly v. General Motors Acceptance Corp.*, 96 N.M. 264, 629 P.2d 340 (Ct. App. 1980), *rev'd on other grounds*, 96 N.M. 113, 628 P.2d 683 (1981); *Jim v. CIT Financial Services Corp.*, 87 N.M. 362, 533 P.2d 551 (1975); *Babbitt Ford Inc. v. Navajo Indian Tribe*, 710 F.2d 587 (9th Cir. 1983). The record shows that Petitioners traveled onto the Navajo reservation and went to the residence of the Respondents, on tribal trust land, not non-Indian-owned fee land, and not on a highway right-of-way. There, without Respondents' written consent and without the order of any Navajo court, Petitioners repossessed the vehicle that Respondents had purchased from them. App. 32-33; 10-11. Under these

facts, nothing in *Montana* or *Strate*, imposes any limitation on Navajo court jurisdiction over Petitioners for claims arising from their actions.[2] As this Court acknowledged in *Strate*, "tribes retain considerable control over non-member conduct on tribal land." 117 S.Ct. at 1413.

Even if *Montana* or *Strate* did apply, moreover, Navajo court jurisdiction would be fully warranted in any event, both because of the consensual contractual relationship between the parties that gave rise to the repossession and also because of the importance of the Navajo repossession law to protecting the "economic security" and the "health and welfare" of members of the Tribe. The Navajo Tribal Code provided Cowboy Auto Sales a remedy and a two-level court system to enforce its security interest in the Halwoods' vehicle. Instead, Cowboy came onto the reservation and committed the torts of trespass and conversion. 7 N.T.C. § 609 provides: "Any person who violates 7 N.T.C. § 607 and any business whose employee violates such section *is deemed to have breached the peace of the Navajo Nation*, and shall be civilly liable to the purchaser. . . . " (emphasis added).

Under the *Montana* doctrine, thus, the Tribe had full authority to exercise both regulatory and civil court jurisdiction over Petitioners with respect to this repossession, regardless of the status of the land on which it occurred.

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[2] Nor is it at all correct, as Petitioners contend, Petition at 8, that since the Navajo Tribe never adopted a constitution under the Indian Reorganization Act, the tribe has no authority to regulate the conduct of non-Indians. This Court expressly held to the contrary in *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195 (1985).

IV. PETITIONERS' ATTACK ON THE FULL FAITH AND CREDIT HOLDING OF THE NEW MEXICO COURT IN *HALWOOD I*, EVEN WERE IT MERITORIOUS, IS NOT REVIEWABLE HERE, AS THAT DECISION TO RECOGNIZE THE NAVAJO JUDGMENT IS FULLY SUPPORTED BY AN INDEPENDENT AND FULLY ADEQUATE STATE GROUND.

Petitioners attempt to make much of the fact that the Court of Appeals in *Halwood I* rested its decision, at least in part, on the earlier decision of the New Mexico Supreme Court in *Jim v. CIT. Jim* held that the state was required to give full faith and credit to public records of the Navajo Nation under the provisions of 28 U.S.C. Sec. 1738, viewing an Indian Tribe as the equivalent of a "territory" within the language of that statute. Although there is a recent Ninth Circuit decision holding to the contrary, upon which Petitioners place great reliance, *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997), *cert. denied*, 118 S.Ct. 1516 (1998), there are other cases fully supporting the New Mexico Supreme Court's view of Section 1738.[3]

Petitioners attempt to turn a simple disagreement among courts into a mammoth federal jurisdictional issue. They contend that since the place where the repossession occurred, near Chinle, Arizona, is within the

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[3] *See, e.g., In Re Adoption of Buehl*, 87 Wash.2d 647, 555 P.2 1334 (1976); *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982); *and see Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65-66 n.21 (1978); *Tracy v. Superior Court*, 168 Ariz. 21, 810 P.2d 1030 (1991); *United States ex rel. Mackey v. Cox*, 59 U.S. (18 How.) 100 (1856).

geographical boundaries of the Ninth Circuit, which decided *Wilson*, a New Mexico court is precluded from applying its own law to determine the enforceability of the Navajo judgment. This is a specious argument: this case was properly filed in a New Mexico court for enforcement of the Navajo judgment, because New Mexico is where Petitioners and their assets are located. New Mexico courts are entitled to make their own determination as to how to treat decisions of Navajo courts (or tribal courts located anywhere else in the country), as they choose. In doing so, they are not "extending their jurisdiction," as Petitioners claim, any more than any court does when determining whether to enforce a foreign judgment under its own rules.

More importantly, however, as is clear from the decision in *Halwood I*, and from the brief discussion of the issue in *Halwood II*, *see* App. 3, 21-22, the Court of Appeals did not solely rest its decision on the federal law issue of full faith and credit. It also held expressly that it would arrive at the very same decision on the purely state law ground of comity. Again, in this regard, its decision is supported by decisions from numerous other jurisdictions. *See, e.g., Mexican v. Circle Bear*, 370 N.W.2d 737 (S.D. 1985); *Allen v. Industrial Commission*, 92 Ariz. 357, 377 P.2d 201 (1962); *Wippert v. Blackfeet Tribe*, 654 P.2d 512 (Mont. 1982); *In Re Marriage of Red Fox*, 23 Ore. App. 393 (1975); *Fredericks v. Eide Kirchman*, 462 N.W.2d 164 (N.D. 1990). Even if this Court felt that the question of whether an Indian tribe might properly be deemed a territory within the meaning of 28 U.S.C. Section 1738 was one meriting consideration in a proper case, thus, this would not be such a case. The decision below may be

seen as resting entirely on the alternative doctrine of comity, a matter of state law and policy consideration that is solely within the discretion of state courts to determine. Again, thus, under the circumstances, this Court has no jurisdiction to consider the decision of the New Mexico Court of Appeals in *Halwood I*, even were a timely petition for review presented here.

CONCLUSION

For all of the foregoing reasons, and others, the Petition should be denied.

Respectfully submitted,

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